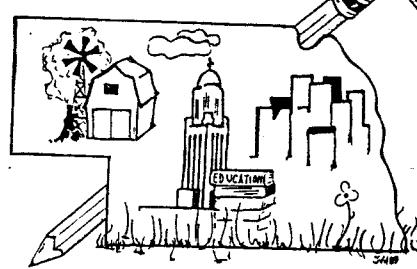


# The Nebraska Observer

Vol 4, No. 4 · April 26, 1989



formerly WHAMO

Director Believes Employee AIDS Testing Necessary

## ENCOR Appeals Case to U.S. Supreme Court

by Frances Mendenhall

ENCOR, the Eastern Nebraska Community Office of Retardation, is a comprehensive, community based program that cares for 800 clients in the five counties of Eastern Nebraska who vary in their degree of dependency. ENCOR has a yearly budget of \$12 million.

In late 1987, responding not only to growing general public concern about AIDS but to a recent AIDS death of an ENCOR employee as well, the agency adopted a policy of yearly testing of certain of its employees for AIDS. A group of employees filed a civil rights suit in the Federal District Court with help from the Nebraska Civil Liberties Union and cooperating attorneys from Kutak Rock. The employees won.

Then the case was appealed by ENCOR to the 8th Circuit Court of Appeals in St. Paul, and again the employees won.

Last week, the Governing Board of ENHSA, Eastern Nebraska Human Services Agency, the umbrella organization of ENCOR, decided to appeal the case again, this time to the U.S. Supreme Court.

### Employee Privacy

For the employees, the issue is whether risk to clients justifies the invasion of privacy represented by required testing. Others have raised questions regarding ENCOR's use of public resources for this kind of client advocacy.

### Protecting Clients

ENCOR Director Don Moray believes that certain clients, because of the degree of their dependence, are very likely to have intense interactions with their care givers. These clients sometimes become violent or must be restrained, and there is a risk that in such episodes blood might be drawn.

Moray said that there were 325 individuals in this category, and cited reports of 130-140 incidents in a five-year period when blood was drawn.

Another client type of special concern, according to Moray, is the individual with a compromised immune system, either because of Down's syndrome, or because of the effects of medication such as thorazine. ENCOR has 98 Down's syndrome clients.

ENCOR may, according to Moray, be the first such agency in the country to mandate employee testing. But, he feels, it is appropriate that they take the lead, because

they have a reputation as leaders in community programs for the retarded. Moray feels that protection of the clients should be the first goal, and that the expense of the litigation and the testing program are justified. He cites a recent Supreme Court decision affirming random drug testing for railroad employees as a sign that they will in this case too favor testing over privacy.

Dr. Jonathan Goldsmith of UNMC disagrees that there is appreciable risk to the clients. Goldsmith, who is Director of the Nebraska AIDS Education and Training Center, points out that the setting is not a health care environment where blood is drawn, but a workplace. Why, then should there be any greater likelihood of AIDS exposure, which can only happen through sexual contact, maternal to infant, or blood exposure? Whatever risks might exist, he said, could be reduced essentially to zero by simple measures such as wearing long sleeves when working with clients who bite.

Goldsmith doubts that there is any increase in risk for transmission of the HIV to these patients because some are immunocompromised. "There simply is no data to support this," he said.

### Funding From Board of Governors

Douglas County Board Chairman Mike Albert is one of the five county representatives on the ENHSA Governing Board. Douglas, Cass, Sarpy, Washington, and Dodge Counties each are represented by one person on this board. It is this board that determines ENCOR's budget, and provides money from each county. They have voted in support of Moray to appeal the AIDS testing case.

Besides the recommendations of the director, Albert said he based his decision to appeal the case on ENCOR's attorney Bruce Mason's summation of his understanding of the current Supreme Court and their likelihood to support testing. Albert also believes that the issue is different for ENCOR, a community based agency, than it might be for others.

So far, lawyer's and other fees paid by the defense total over \$100,000. Albert said that Mason estimated the cost of the appeal to be a minimum of \$10,000 and a maximum of \$20,000. If ENCOR wins, it will also have to pay for the cost of the AIDS testing itself, which is estimated at about \$8/yr. for each of the 330 employees subject to testing. If

ENCOR loses again it will also be required to pay the plaintiff's expenses which have been stipulated at \$85,600 for the District Court trial, and will probably come out to be \$11,000 each for each of the appeals.

### Gay Workers, Bureaucracy

While the plaintiffs are not bringing it up, it hardly seems to be an accident that this issue should be brought up in an agency that has been a long time employer of gays. It is commonly known in the community that gays have in the past found ENCOR to be a work environment where their contributions might be more appreciated than they might have been in more traditional settings. ENCOR, in its early days in the Seventies, was known for its progressiveness and youthful leadership, as well as for its innovation in providing comprehensive, publicly funded care in a community setting.

Now, increasing grumbling is heard about working for ENCOR. How limited funding is spent is a frequent source of complaint; most ENCOR workers, according to their most recent union contract, are paid about \$4/hr. Cost of living increases have not kept up with inflation. There is now a client waiting list of more than 300. Most recently, with the death of 23-year-old David Bradley in ENCOR's care early this month and the subsequent arraignment of the home teacher involved, there is concern about the direction the agency might be taking to assure quality of care, and fear that it will become more bureaucratic.

Barbara Jessing, a former ENCOR social service worker who left in 1981 frustrated that innovative leadership was being replaced by compliant people, sees the whole

organization as a dinosaur. "It has shifted from being growth oriented to maintenance," she said. Jessing, from continued contact with clients and coworkers, believes that such events as the ones that caused her to leave in 1981 have continued. The agency's pursuit of its AIDS testing policy is just the most recent example of ENCOR's recent inclination to discourage those workers inclined to ask too many questions.

### 'Less Client-Centered'

Sue Davidson, with ENCOR as a volunteer in the Seventies, now a home teacher, believes that the agency is less client centered now. "Sick clients (unless they have high fever, diarrhea, etc.) have to go to the workshops because no one can stay at home with them. This was the case with David Bradley. The last day he arrived at work he

*Continued on page 5*

### Inside:

*Taxation, P. 2*

*Mess in Blair, P.3*

*Abuse of Racehorses, P. 4*

*City Elections, P. 6*

*N-Waste Legislation, P.8*

*Uranium Mining, P. 9*

*Drug Testing in RR Industry, P. 10*

*Media Comments by Warren Francke, P.12*

### the nebraska observer

PO Box 31383 Omaha, NE 68131

Address Correction Requested

### Subscription Status

To subscribe or renew use coupon page 2.

BULK RATE  
US POSTAGE  
PAID  
OMAHA, NE  
PERMIT NO 1064

# Taxation Need Not Be Public Enemy #1

by Donald W. Macke

*The author, an economist, is the author of the Nebraska Fiscal Report which tracks monthly state tax developments.*

Since the early 1980s I have observed and studied Nebraska's tax system, and the debate on a whole list of tax issues. In 1986 I was pleased to see the Legislature, with the help of Syracuse University, embark on a comprehensive study of Nebraska taxes. As sold to the Legislature, this effort would provide an information base to guide Nebraska in crafting good public tax policy.

Roger Vaughan, in his now-classic book *State Taxation and Economic Development*, provides a fine framework for guiding tax policy. He argues that a tax system should be efficient, equitable, and have a low administrative cost. By "efficient" Vaughan suggests that taxes should be set to generate enough money to meet the desired public services of a majority of the people. Vaughan argues that under an "equitable" tax system no group of taxpayers would be discriminated against, and relative tax burdens should be reasonable given the wealth of the taxpayers. A low "administrative cost" is more than low overhead, it also includes the ease of taxpayer compliance with tax codes and forms.

With continuing horror, I witnessed the 1987 Vard Johnson, Kay Orr, and Mike Harper "tax reform" juggernaut. The 1987 tax changes embodied in LBs 772 (which changed corporate taxation), 773 (which changed personal income taxation), LB 775 (which provided tax breaks for larger corporations), and LB 270 (which provided tax breaks for smaller corporations managed to collectively violate all of Vaughan's three guidelines for good tax policy. The frosting on this cake might be the fact that all of these changes were instituted without any benefit from the great-half-a-million-dollar Syracuse Tax Study.

LB 773 dramatically reduced the progressivity (a key measure of equity) of Nebraska's personal income tax system. While significantly raising taxes for most middle income Nebraskans, this policy provided multi-million dollar capital gains exemptions for Nebraska's wealthiest citizens.

LBs 270 and 775 provide the most profitable corporations in the state with the opportunity to eliminate most of their state taxes, while providing no tax breaks for restructuring, struggling, emerging, or moderately profitable firms. These policies went on to specifically prevent farm- and ranch-related enterprises from taking advantage of lower taxes through these policies.

Damage to Nebraska's tax system has been done by these policies. Someday Nebraskans will take another look and begin the hard process of creating that fair tax system envisioned when the Syracuse Study was commissioned three years ago.

The list of choices are numerous and many are not clear or adequately researched, but I have three policy suggestions to start a new debate on Nebraska taxation.

First, taxpayers generally feel that each year the government (federal, state, and local) takes a little more of our paycheck or business profits. Hard and fast rules do not

make good tax policy, but the time has come for Nebraska government (state and local) to enter into a public compact with Nebraska households and businesses. Through this compact, decisions on adding taxes, raising taxes, etc. would be guided by a pledge (and the information to verify it) by policy makers and administrators to take not more than five or six percent of Nebraskans' annual earnings. Collectively, Nebraska state and local government should not exceed 18 to 20 percent of annual earnings. If the compact is to be changed, the change must come through an open public debate ultimately supporting

greater investments of the citizens' wealth in government enterprises.

Second, our present instability allows economic ups and downs which can create short-term tax surpluses or shortfalls.

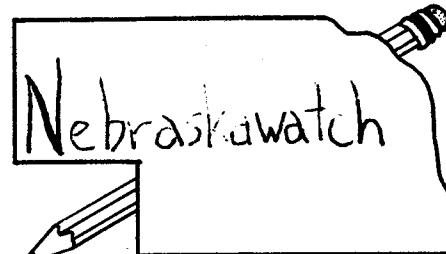
States like Nebraska are constitutionally restricted from borrowing (which is not a bad idea), and so when times are bad, programs are cut and previous public investments undermined.

The Legislature, through Senator Warner's guidance, has attempted and succeeded in building upon a record state reserve to provide a cushion in bad times. However, such reserves carry two problems. Reserves, even record reserves, are generally

of limited value during multi-year recessions when you need them most. Additionally, high reserves tend to hog-tie governors, legislators, and vested interests in spending frenzies, adding to the public's "faith" in the system. Another approach to providing fiscal stability in unstable times is tax banking, long advocated by one of Nebraska's better tax experts. In good times when budget surpluses are building, the state would cut sales taxes by a half-point or a full point and leave the reserves in the pockets of the taxpayers. In bad times, these taxes would be reinstated to generate enough income to prevent destructive cutting of government activities.

Finally, in this the information age, the potential exists to create a tax system that meets Vaughan's standards for fairness. If the expectations of the Syracuse Study would have been kept by the Governor, the Legislature and the vested interests, Nebraskans would have an information base to support the crafting of meaningful tax reform. LBs 772, 773, 775 and 270 notwithstanding, Nebraska can solve its fiscal problems, and maybe even achieve real property tax relief.

A hard-earned lesson from the 1970s energy crisis was that we really did not have an energy crisis, but a lack of will to solve energy problems, allowing a crisis to evolve. The same applies to Nebraska taxes. We pursue bad tax policy because of vested interest political pressure. But if the truth be known, we have the capacity, we even have the knowledge to make fair tax policy if we can only find the political courage.



## Observer Deadlines

*The next issue of the Nebraska Observer will come out May 24. We must receive your story ideas by May 9. Copy is due May 16. Story ideas for the June 28 issue are due June 13. Copy is due June 20.*

## Put me on your list of Observer Supporters!

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone day: \_\_\_\_\_

Phone evening: \_\_\_\_\_

I read: Morning WH \_\_\_\_\_ Evening WH \_\_\_\_\_

The Nebraska Observer · PO Box 31383 · Omaha, NE 68131

I want to receive the newsletter, and since I know the Kiewit Foundation didn't give you a grant this year, I'll help out with a donation.\*

— \$20 member  
— \$50 sustainer

Count me in for some donated labor!

I want to monitor news about:

Omaha Residents:

— I can help maintain the mailing list.  
— I can help with mailings.

\*The Nebraska Observer needs at least \$20/yr. from all its members who are employed.

Editor	Frances Mendenhall
Environmental Editor	Lynn Moore
Copy Editor	Karen Nelson
Computer Page Makeup	Tony Carr
Circulation	Jean Holland

Board of Directors	Jim Cavanaugh
	Dick Dinsmore
	Frances Mendenhall

Contributing writers and artists	Colleen Aagesen
	Skip Laitner
	John Hayden
	Lynn Moorer
	Frances Mendenhall
	Paul Fell

The Nebraska Observer is distributed monthly by the Nebraska Citizen Publishing Group, a nonprofit corporation. Letters and manuscripts may be submitted to:  
P.O. Box 31383, Omaha, NE 68131

They should include the author's phone number and address.

Phone: (Lincoln) 402-476-1183  
(Omaha) 402-551-2629

# Recycling Operation Leaves Drums in Blair

by Colleen Aagesen

Last May Bill Hindman was big news in Blair. The 30-year-old president of Drum Industries was making plans to relocate his business in the area. A fire had recently destroyed his Omaha drum and solvent recycling plant, and the state Department of Environmental Control (DEC) had given him a customary grace period to rebuild his facility. With a December deadline for beginning operations, the proposed \$250,000 facility promised to employ eight people—with the eventual likelihood of 17 additional jobs.

The Blair newspaper heralded the May ground-breaking ceremony with a front-page story which pictured Hindman together with the mayor, the city administrator, and the Chamber of Commerce president.

## "Out of money"

Today Hindman cannot be reached by phone. He is reported to claim that he has run out of money. His proposed \$250,000 plant consists of a few footings and concrete slabs. Approximately 400 barrels of the original 5,000 stand behind a chain-link fence two miles east of Blair.

At least the drums are empty now. Until two weeks ago, 300 drums contained solvents. The metal drums, exposed to the outdoor elements, were beginning to weather, triggering concern over leaks. Area residents say Hindman continues to haul drums away from the site. According to Wanda Schroeder, DEC Hazardous Waste Specialist, the hauling is allowed because the drums are empty. Hindman can sell the barrels at one or two dollars apiece and make a dent in the \$38,000 cleanup bill he owes the 44 Omaha and Lincoln businesses that trusted him to recycle and remove their drums of used solvents.

These 44 industries include paint, auto body, and print shops. Paying Hindman \$40 to \$50 a barrel to remove their used solvents, now they must pay again. All the concerned parties seem to agree that Hindman had a good idea. "His was basically a recycling plan," said Schroeder.

Bill Wilson, Blair City Building Inspector, explained that Hindman planned to clean the drums with the used solvents and then sell the cleaned drums. The small amount of solvent remaining would be sent to an Environmental Protection Agency-approved hazardous waste site in Missouri.

But the Blair recycling operation never materialized. Instead, Hindman simply used the site for storing solvent-filled drums.

In an ironic twist, the 44 businesses were forced to hire another company to clean up the cleaner.

"The generators have a cradle-to-grave responsibility for the hazardous wastes," said David McMahan, president of Four Seasons Paint Company of Lincoln, one of

the waste generators. "We bear federal liability from the second it is produced until it is finally and properly recycled or disposed of."

## Generators are Responsible

The businesses formed a steering committee, calling themselves "Potentially Responsible Parties," and took bids for the cleanup job.

PRP selected AmerEco of Kingsville, Mo. Omaha attorney and Nebraska Wildlife Federation board member Paul Prentiss represents one of the generators and sits on the steering committee. Prentiss said AmerEco ran a clean plant in Missouri and was chosen because it "had its act together."

Despite allegations of environmental violations by AmerEco, the committee decided the company had a strong safety record. "We asked about the charges and were satisfied with their answers," said Prentiss. "We also liked the way they did their bid."

AmerEco has now finished the cleanup operation. It removed 300 drums of solvents from the Blair site and eliminated contaminated rinse water from the Omaha plant.

Ken Kolthoff, DEC Hazardous Waste Section Supervisor, said it was a "textbook case of cooperation" among AmerEco, PRP and DEC. "They did a good job," said Schroeder. "Either my boss (Kolthoff) or I was on site during the entire cleanup process. All the safety and health plans were in place. We made sure that all parts of the approved plan the PRP submitted were followed."

According to Prentiss, "If the 44 industries had not cooperated in this volunteer (cleanup) effort, it would have been a Superfund site." (The Environmental Protection Agency's Superfund program targets high-priority contamination sites for cleanup with federal money.)

Schroeder agreed. The flammable materials at the Blair site, prone to leakage, would have been eligible, she said. Without the cooperative volunteer effort the EPA would have cleaned up and billed the generators. Schroeder said the cost would have been higher because "there would have been a middleman. The process (also) would have taken more time and been more hassle."

## Residents: "What went wrong?"

Dorothy Tripp, a Washington County resident, is not satisfied. She thinks the generators failed to check out Hindman and Drum Industries adequately in the first place. "Hazardous waste is a hot potato," she said. "They want to get rid of it. They don't care where it goes."

McMahan said he does care. He explained that as long as Drum Industries carried out its job cleaning the drums with used solvents, selling the closed drums, and transporting the remaining solvents to a

hazardous waste site, the solvents were considered industrial products, not hazardous wastes. Once Hindman ceased recycling after the fire and simply stored the drums, the solvents were then regarded as hazardous.

"We checked Drum Industries," McMahan said, "but we need to read the fine print next time." He said the DEC Hazardous Waste Generator registration number meant simply that the firm could do business in Nebraska.

Mayor Stan Jensen of Blair wonders what went wrong in the beginning. "Yes, it looked good at the time," he said. "But, no, we didn't court him—not like we have (courted) a book publishing company or a meatpacking company. I talked with (Hindman) briefly at the ground-breaking ceremony. He seemed to want to be part of the community."

Building Inspector Wilson said Hindman was "certainly enthusiastic" about his relocation.

Jensen is angry. "We're getting bad publicity over something we had no control over. We didn't bend any rules with Drum Industries." He cites as an example the soil moisture sampling required by the city because of the site's proximity to the Missouri River. The moisture in the soil might have created a need for extra foundation support. "The building inspector sat down with him,"

Jensen said, "and we followed every rule to the letter."

## Gaps in Nebraska Law

"There are gaps in Nebraska's environmental law," said state Assistant Attorney General Steve Moeller. "For example, we have weak criminal laws, and we're going to get nailed some day. This legislative session the DEC recommended to deny permits to convicted felons, but the measure didn't even get through committee."

Schroeder would like tougher recycling laws in Nebraska. "We can make them more stringent than the federal ones," she said. Meanwhile, Schroeder waits for test results from recent soil samples from the Blair site.

Jensen thinks more careful monitoring in the initial stages of the project is needed, involving DEC as closely as it was in the AmerEco cleanup. "I keep reading about the Superfund and cleanup after (contamination) happens," he said. "Why isn't there the initial concern?"

McMahan said next time they will find someone more reliable and make sure he is doing the recycling or disposing as contracted. "I don't want to go through this again," he said.

Moeller said the state is suing Drum Industries for damages and civil penalties for violations occurring at both the Omaha and Blair sites.

## CALENDAR

### May 1

7 p.m.: Douglas County Public Landfill hearing. Reconsidering Permit issued to Waste Management; Legislative Chamber, City County Office Bldg, 1819 Farnam, Omaha.

8 p.m.: Nemaha County Monitoring Committee Meeting; Legion Hall, Johnson

### May 11

7 p.m.: Hearing on issuance of uranium mining permit to Ferret Exploration Co., HOWARD DODD HALL, Fort Robinson State Park, Crawford

### May 18

7:30 a.m. Environmental Control Council meeting, Papio-Missouri River NRD, 8901 S. 154th St., Omaha. Agenda at 9:45 a.m. includes consideration of Waste-Tech's de-listing petition for a Hazardous Waste incinerator permit in Kimball

### May 20

9:30 a.m.: Nuckolls County Monitoring Committee Meeting; Nelson High School

# Abuse Cited in Pari-Mutuel Horse Racing

May 3 marks the beginning of racing season in Omaha. Nebraska has five thoroughbred tracks (Omaha, Lincoln, Grand Island, and Columbus) and two quarter horse tracks (Hastings and Broken Bow).

The following article comes from the Minnesota Network for Animal Concerns. The source of the information is the Humane Society, with appropriate comments added on conditions here in Nebraska.

Why would anyone object to organized horse racing?

Currently, 31 states allow horse racing. Under ideal conditions, this sport could be wonderful both for horse and human. Unfortunately, pari-mutuel horse racing is cruel and inhumane, exploiting horses, jeopardizing the safety of jockeys, and shortchanging the bettors to benefit horse owners, trainers, track veterinarians, and race track operators. This exploitation results in the abuse and often the death of tens of thousands of racehorses in the United States every year.

What types of abuse occur to the horses?

## Two-year old racing

Most horses begin racing at 2 years of age before their musculoskeletal system is fully developed. In reality, they may be just over a year old, since a racing horse is considered 1-year-old on January 1 irrespective of when the horse was born during the previous calendar year.

No one would think of placing a 12-year old child in a professional football game. Nevertheless, racehorse owners, who desperately want to make as much money on their investment as quickly as possible, think little of placing an immature horse in competition. The American Association of Equine Practitioners lists 2-year-old racing as one of the major causes of injuries to racehorses.

Excessive Racing: Horses are raced as frequently as possible to earn purses for their owners and trainers, who hardly pay attention to the physical condition of the animals.

Faulty Race Track Surfaces: Many track surfaces are kept intentionally hard to provide fast race times. However, these hard surfaces result in extreme concussion to the horses' limbs, causing lameness problems. (Editor's note: A spokesperson for Ak-Sar-Ben said that there is a 3.5" cushion at that track.)

## Abuse of Drugs

A variety of drugs are used on racehorses enabling them to run full out despite injuries, which are further aggravated. Often an injured leg shatters under the stress of racing, causing dangerous spills in which horses are crippled and must be destroyed. Others are forced to continue their racing careers through the use of drugs in spite of

chronic injuries. Two of the most well-known drugs are "bute" and "lasix."

"Bute" is an anti-inflammatory pain-killer which can cover up serious injuries and allow lame horses to race. The manufacturer says "...it does not alleviate the clinical condition. This must be accomplished by the normal healing process."

"Lasix" is supposedly used to prevent pulmonary bleeding in racehorses, though it was never approved by the FDA for this purpose. The manufacturer has not been able to substantiate its effectiveness in this regard. About 80 percent of racehorses run on lasix though only about 5 percent have serious bleeding problems. The real reasons for using lasix are its abilities to mask the use of other drugs in urine tests and to reduce the weight of a racehorse by six to eight pounds through dehydration within a day before a race.

## Inclement Weather

Other Abuses: Racehorses are frequently forced to race in inclement weather, since cancellation of race dates results in loss of revenue.

As a result of these various abuses, veterinarians caring for racehorses estimate that 60 percent to 90 percent of their charges are significantly lame. A 1983 report states that "80 percent of racehorses have some kind of injury; joint damage and joint disease are common."

In its Spring 1985 publication, the American Horse Protection Association, Inc. calls attention to the "inhumane system of the racing industry (racing) horses when they are too young,...(and returning) injured

horses to the track with the aid of drugs before their injuries have fully healed."

Are we sure there is a problem with drugs in racing?

Yes. In fact, bills S-1233 and HR-1694, the latter sponsored by Congressman Bruce Vento of Minnesota, addressing this problem have been pending before the U.S. Congress since 1980, and several hearings have been held. The television show "60 Minutes" reported on the widespread problems in 1979 and UPI released a series of articles describing the many problems in 1981. In May 1984, NBC "Nightly News" exposed the scandalous and pervasive abuse of drugs inflicted upon racehorses.

Joseph Kellman, a member of the Illinois Racing Board, announced his resignation in June, 1984, because of his frustration over the Board's inability to end drug abuse on the racetrack. Dr. Arthur Patterson, US FDA Horse Drug Supervisor, stated: "If a horse has to be medicated prior to racing, it isn't well enough to race."

Isn't racing a good form of entertainment for people who like to bet?

One of the reasons that Congress is so concerned about drugging of racehorses is that the outcome of the races can be so easily 'fixed.' In other words, the average citizen betting on a race can be cheated. This is unfair to the people who bet their hard-earned money on horses expecting to have a fair race run.

## How are jockeys affected?

In 1978, the Jockeys' Guild reported that 2,000 spills were experienced among its 1,800 members, resulting in the hospitalization of 1,500 riders for two weeks or

more, four deaths, and the paralyzation of four other jockeys. Most of these breakdowns were attributed to the increased use of drugs prior to races.

## Revenue Raised

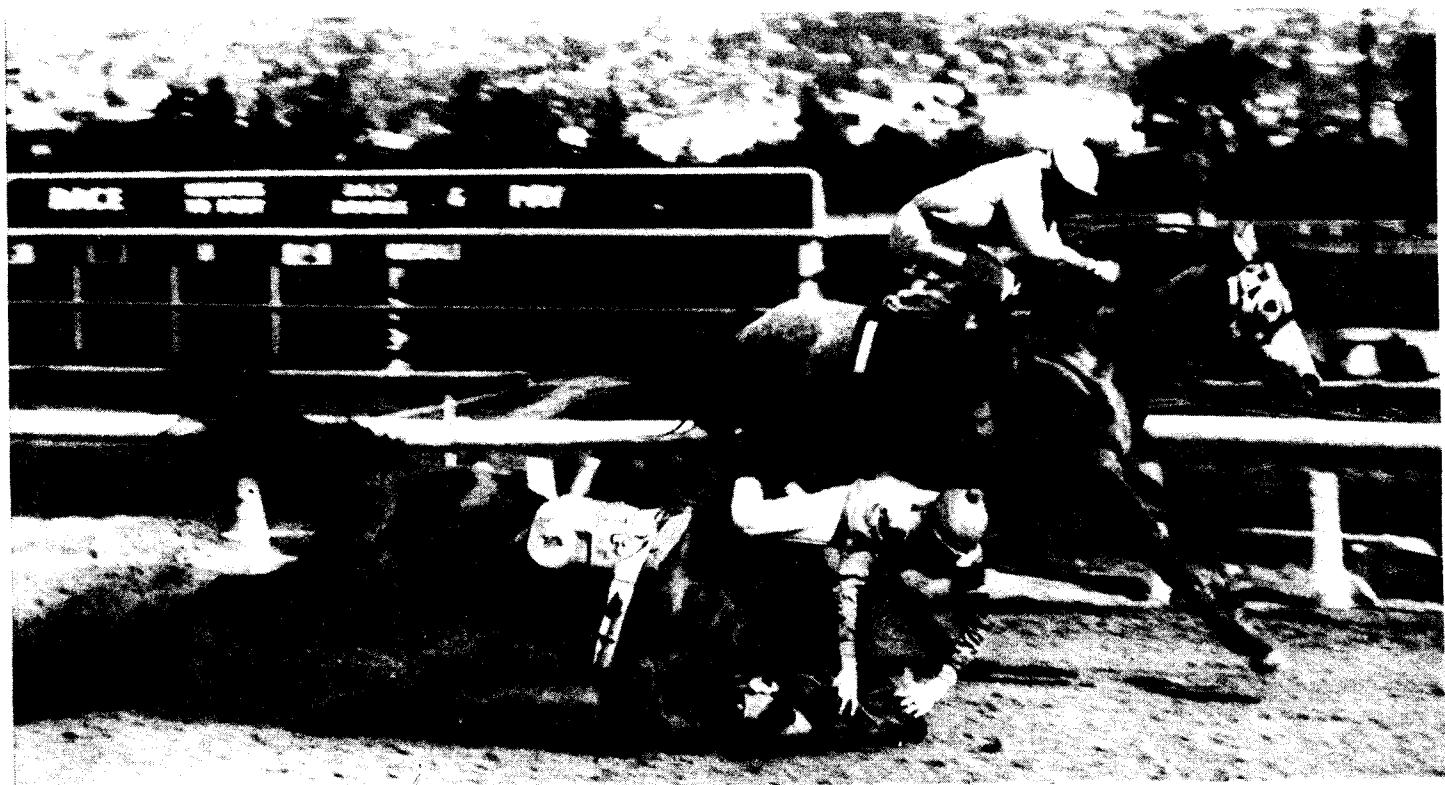
Isn't the revenue raised from racing enough to justify any cruelty?

The average, annual amount of racing revenue reported by individual states is less than three-tenths of 1 percent of a state's income. (Editor's note: In Nebraska, pari-mutuel betting has not brought in any tax money since the first \$100,000,000 of a track's handle is exempt from taxes. Money not spent at the track would probably be used for consumable goods upon which there is a state sales tax. Spent on other consumable goods or services, the money would also generate jobs. Thus, pari-mutuel racing contributes little to the economic welfare of a community; such has been documented by studies conducted at the University of Michigan and the University of Connecticut. Of course, no amount of money is ever sufficient justification for cruelty.

Don't state racing commissions guard against problems?

States have legalized racing only to reap supposed financial gains. The states share with the race tracks and the horsemen a percentage of all money wagered at the race tracks. This causes a conflict of interest, since the states are partners in a business which they are supposed to regulate. As a result, racing commissions are often more concerned about money than with the integrity of the sport or the welfare of the horses.

Continued on page 5



At Golden Gate Field in Albany, Calif., Western Bagel, a three-year-old gelding, broke his leg five feet before the wire. He was destroyed after the race, only the second of his career.

# Nebraska Garbage: 73 Million Tons per Year

by Skip Laitner

You might say that Nebraska's standard of living is more the result of garbage than Yankee ingenuity.

In 1986, Nebraska's per capita personal income averaged \$13,742. In that same year Nebraskans generated an estimated 73 million tons of garbage, including all forms of industrial, agricultural and municipal solid wastes. That is about 91,000 pounds of garbage for each Nebraska resident.

Each day we generate enough waste to fill up 30,000 garbage trucks. Looked at from an economic perspective, it takes more than six pounds of waste to provide a dollar of income in the state. And that is a lot of garbage. More important, that is a lot of wasted resources.

This incredible level of waste hits us in two ways. First, we're running out of room to safely dispose of our garbage and we're doing very little about it. Second, the enormous inefficiency built into our production system seriously weakens our economy--probably more than the state's tax burden, the national debt and the cost of labor.

We tend to think of the waste issue more in terms of a "litter" problem than a serious environmental and economic impacts. For example, we rely on the spirit of community volunteers to clean up the obvi-

ous litter in our neighborhoods rather than fund a serious program to squarely address the waste issue.

While this "out-of-sight, out-of-mind" policy allows us to ignore the problems of a wasted economy for a time, it will end up costing us dearly in the future as the waste problem literally continues to pile up.

The biggest program to address the solid waste issue at the state level appears to be the Legislature's Nebraska Litter Reduction and Recycling Fund. This provides about \$460,000 in annual program funds through a minor tax on products that are likely to become litter. But that is a paltry sum of

braska's figure to the goal of a number of counties in the State of Washington. There, county officials along the Puget Sound have targeted 65 percent of the total waste stream for recycling by the year 2000.

If we stop to think about the waste issue as more than a litter problem, we may be able to see a lot of economic opportunity for both the state and the nation. For example, recycling opportunities provide about three times the number of jobs as landfill operations.

The recycling of household batteries--we use millions of them--can become a small but important new supply of metals like mercury, nickel and cadmium. Every recycled automobile tire saves about eight gallons of gasoline. That can help reduce our dependence on foreign oil supplies.

Substituting recycled paper for virgin resources also uses significantly less energy. And each recycled ream of paper generates 70 percent less air pollution and 35 percent less water pollution.

The long-term success of managing a solid waste program depends upon our ability to create and sustain a market for recycled materials. One step in that direction is to have all state and local government agencies use recycled paper.

While this initially might cost more than new paper supplies, that single policy effort would go a long way to open up the



money, about 30 cents per Nebraskan. The amount pales against the 73 million tons of waste discarded directly and indirectly each year by Nebraskans.

At most, we recycle about 3 percent of all municipal wastes in the state. Contrast that anemic figure with Oregon's 20 percent recycling rate. Or better yet, compare Ne-

recycled paper market. Not only will it eventually lower the costs, but it might even encourage new business activity for Nebraska.

©1989 Skip Laitner. All rights reserved.

## Good Racing?

*Continued from page 4*

Could horse racing ever be humane?

Ideally, horse racing could be humane if conducted properly. However, as long as horse racing is a business and not a "sport," money will take precedence over the welfare of the horse. Monetary incentives will intensify abuses, which increase as more and more horses race. Because of the large amounts of money wagered at race tracks and the resulting potential for huge profits, it does not appear likely that pari-mutuel horse racing ever will become a humane sport. Gambling, quick profits, or tax shelters are the main incentives attracting participants to horse racing. The horse is viewed not as a feeling creature, but merely as a tool for making money.

Horses are valuable animals. Would their owners allow them to be mistreated?

Most racehorses are not extremely valuable animals. They are valuable to their owners only if they are racing and earning purse money. If a horse is tired, ill, or injured, owners are reluctant to rest the animal. For every multi-million dollar racehorse, like "Secretariat," there are thousands of "cheaper" horses that endure a miserable existence--and even die on the race track--in order to try to live up to the hopes of their owners and trainers.

What happens to racehorses who have completed their racing careers?

Most horses race only for a few years. Normally they can live about 20 years or more. However, the lifespan of racing horses is generally shortened and the quality of life severely hampered by their injuries. Increasingly, more and more hopelessly crippled and drugged racehorses are destroyed so the flesh can be sold for profit as horse meat.

## Mark Alan Stamaty



## ENCOR

*Continued from page 1*

was having a seizure when he got off the van." Bradley attended work until last May.

Moray disagrees. "Nobody is required to come to work if they're sick," (but where petit mal seizures are concerned) "a person can have these 150-200 times a day."

He also maintains that the agency is as innovative as ever. "People still come from all over the world to learn from us," he said, and he personally encourages people to bring forth new ideas.

Regarding money, he agrees that all positions in the agency are underpaid, but insists that money from the lawsuit has not come out of the operational budget. The counties came up with that money as a separate item, he said. It could not be spent for any other purpose.

# Politics, Personalities and Why Bother to Vote at All?

## Candidates

### Politicos' Baggage: Practiced Smiles, Sweaty Nightmares

by Richard Shugrue

*Shugrue, a Professor of Law at Creighton University, is a political junkie. He served for 10 years as Nebraska Elections Director for NBC News and is a columnist for the Omaha Daily Record.*

The mayor's race is a safari through jungles of pancakes, kolaches, sausages and chicken legs.

The candidates don practiced smiles and lunge into crowds of people.

They exist in political limbo between the nights of April 4 and May 9, having no idea whether their respective strategies are working.

They pore over printouts and nod to gurus who intone prophecies. But the two candidates know, instinctively, that what really counts is that last hand shook, that last sticker stuck on a willing lapel, that last sign pounded into that last front yard.

They jump up at 3 a.m. sweating, nightmares about "The Numbers" fresh in their minds.

Boyle looks at his 26,000 primary votes. "Now, how do I capture the Conley's 8,200 supporters?"

Morgan muses, "If all 17,600 McCollister voters and all 4,000 Cleary voters join my crusade, I'd have nearly 42,000." He knows 40,000 or so loyal Boyle voters supported the ex-mayor in

the recall.

Boyle hopes all the votes cast for all the Democrats will tilt to him, for they amounted to more than 53,000, or 56 percent. Morgan hopes he'll benefit from the Conley endorsement and at least split Calinger's support.

Alas, no one can predict elections strictly on the basis of past performance, or party preference. One candidate's showing in one election foretells precious little about a later election, what with the cast of characters altered, the issues sharpened, the alliances shuffled.

Like Louis XIV, Mayor Calinger announced that he would receive the candidates (not their ambassadors plenipotentiary) and hear their appeals.

A box score of endorsements is scrawled by the junkies.

The Herald runs a dated picture--in color, no less--of Morgan amid luxurious cars, their chrome glistening from the page. A human interest story there? A kind of Bob McMorris column, but by the hatchet squad?

Or is this--as some pundits contend--the straw that breaks the camel's back, the blind alley, the dead end for P.J.?

Do all the Joe Finorkeys--the average folks with little jobs, big mortgages and car payments

almost as huge--wince when they see the Morgans on a driveway broad enough to hold this armada and, as backdrop, a house as awesome as Brownell-Talbot?

All the while the serene Mike Boyle stands above it, complimenting Calinger for this, the council for that; accepting blame for past error ("mistakes were made") but focusing on those small successes which turned this into a cleaner, better town.

The Morgan campaign is in full swing: The phone banks, the tabloid papers, the direct mail, the ads.

"We're on a roll," they must be saying, the Svengalis of professional politics who mastermind this warfare. "We've narrowed in on Mike's record; a left jab to his street program, a right to his police turmoil."

The little blue Boyle signs spring up like dandelions across the city (Morgan had the best corners and the biggest signs, with metal legs, no less, months ago).

The phoning goes on--on a smaller scale--from that same charmed suite of Bob Kerrey's in the John Wear Building: vote by vote, house by house, block by block the Boyle people tell Mike's story. "Steeled by adversity, fused by family love, driven by dreams for his home town, he asks for

*Continued on page 11*

### Lincoln Commentator: Reasons Not to Vote

What if they gave an election and nobody came? That seemed to be pretty much the result of the primary elections held through Nebraska several weeks ago. By all accounts the voter turnout was disappointing. I can't say that I'm surprised.

Lincoln city council candidate Mike Johanns says he encourages a "no-holds-barred" discussion about the critical issues. I agree that it is badly needed. Let me start the ball rolling by asking all of the present city council candidates in Nebraska: "Just why should we vote for any of you?"

One candidate says he supports quality jobs. That's great. But then he turns around and says he "loves the idea" of a downtown convention center because it will bring tourists to Nebraska. Has anybody told him about the jobs in the tourist industry? They hardly represent the quality jobs that he says he advocates. In fact, far too many of them are only minimum-wage positions.

This kind of contradictory statement is typical of the campaign literature and news interviews given each of the council candidates. For example, one veteran candidate says that, yes, community participation is needed in decisions such as where to locate new shopping malls. But he quickly adds that it is also important for large retail stores such as Wal-Mart to be allowed to build wherever they want. So which is it?

One council aspirant says we need more workers in our downtowns because they will become a new supply of shoppers for the area merchants. Never mind whether the jobs will create a sense of satisfaction, or provide decent incomes for those who are employed--as long as they bring more people downtown to spend their money.

Another nominee argues that we've got to make more room for cars in the downtown areas. Never mind that we are in the grip of a global warming trend and that more automobile traffic is the last thing we should be encouraging. And among the office-seekers is even one who claims to have vision, while a second dares to admit that he is having fun. On the whole, we are given some very uninspiring reasons to vote.

Nothing said by any of the candidates indicates they have seriously examined the emerging trends in either the economy or the environment. If they had taken even a cursory look beyond their own campaign literature, they might have seen that their growth prescriptions, while suitable for the 1960s, will fail miserably in the 1990s.

Let me point to four reports that shed some light on the development process. The first, issued by the Corporation for Enterprise Development, gave Nebraska a failing grade in business vitality--for exactly the same kind of policies advocated by the Nebraska candidates! Is that the vision we're offered?

The second, Worldwatch Institute's State of

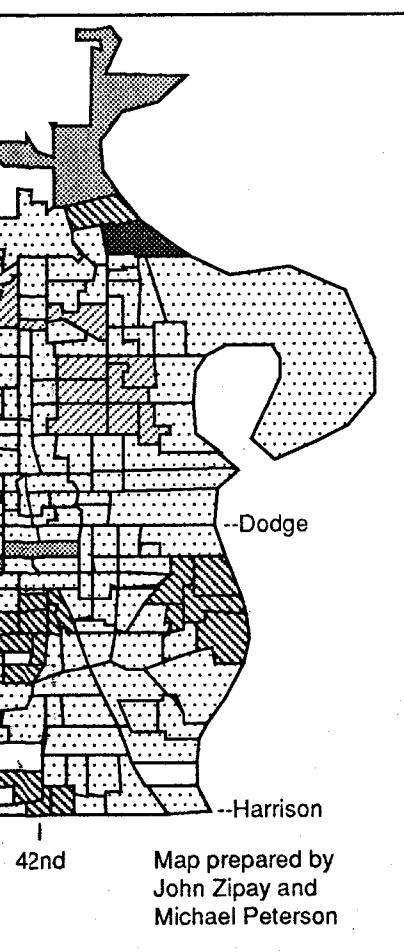
the World Report for 1988, said that unchecked pollution, land mismanagement and population growth have pushed the world to the brink of an environmental Pearl Harbor.

Environmental constraints will have a profound influence on our ability to do business in the future. Yet, none of the candidates have given even a hint of addressing this issue in their statements.

The third report, an article written in the latest issue of *Scientific American*, says that to reverse the global warming trend, we will have to cut worldwide fossil fuel consumption by 50 percent. The policies advocated by each of the candidates will only make that condition worse, not better.

Finally, a report written for the Oregon Economic Development Department indicates that small business formation and retention strategies--ones that rely on local labor and local resources--are far more important to sustaining economic vitality than whether a Wal-Mart locates in the region or not. In fact, Wal-Mart type of operations may lose just as many jobs as are gained.

So, where does all this leave us in terms of the next election go-round? About 30 years in the past, if current thinking prevails. Unless convinced otherwise, I'm going to find some better write-in candidates to support.



Map prepared by  
John Zipay and  
Michael Peterson

# Senators Debate Nuclear Waste Legislation

by Lynn Moorer

With a Nebraska Public Power District display in the Capitol rotunda and a swarm of lobbyists outside the legislative chamber's glass doors, legislators advanced LB 761 to Select File (the second, and next-to-last, stage of debate) April 18. After six and one-half hours of debate spread over two days, the bill was advanced on a 40-2 vote.

## Right to Vote

On a 22-24 vote\*, three votes short of the 25 needed to amend the bill, the Legislature declined to amend LB 761 to include a countywide vote of approval as a requirement for siting a low-level radioactive waste facility in the state.

Senator Cap Dierks' right-to-vote amendment engendered heated debate. Dierks said he will attempt to amend a right-to-vote provision into LB 761 when it comes up for discussion on Select File.

## Arguments For:

"The people of our state have been totally deceived and misled on this entire issue of the right to vote. It seems to me that this whole process... has been stonewalled by the present administration. There has been a campaign of deceit, misrepresentation and subterfuge to not allow the citizens... a right to vote on this issue. If community consent doesn't mean the right to vote, I would like to know what it does mean."

Senator Jim McFarland of Lincoln

"I think it's farfetched that the people believed (in the 402 vote) that they were voting on whether they were going to accept a site in their local community. They were voting on whether they should face up to their obligations... and remain in the compact.... Now they need the right that's been promised."

Senator Doug Kristensen of Minden

"(T)he argument that... a vote won't allow it to be placed in the most environmentally safe place... doesn't hold any water because... we threw that out the window long ago. Price and availability (of land)... were the considerations in Nemaha County."

Senator Spence Morrissey of Tecumseh

## Arguments Against:

"(The vote on 402) was widely touted as being the vote that was necessary to reassure the people of their participation in the process. Now you want another vote on a county level. If that were successful... I would expect that you would then demand a vote upon the township level... upon the precinct and... finally, upon the very section in which it would be located."

Senator Loran Schmit of Bellwood

"This issue is of national importance, as well as statewide importance.... We don't ask voter approval to build a dam, to build a highway, to build a wastewater treatment plant."

Senator Owen Elmer of Indianola

"The public said last November, 'We will remain a part of the compact.' (Will we

members of a monitoring committee because they don't have the expertise, I think, is a bunch of hogwash. Those people have brought to us so much information. They're so much more informed than many of the experts and many of us... including myself.... They have the ability to represent themselves."

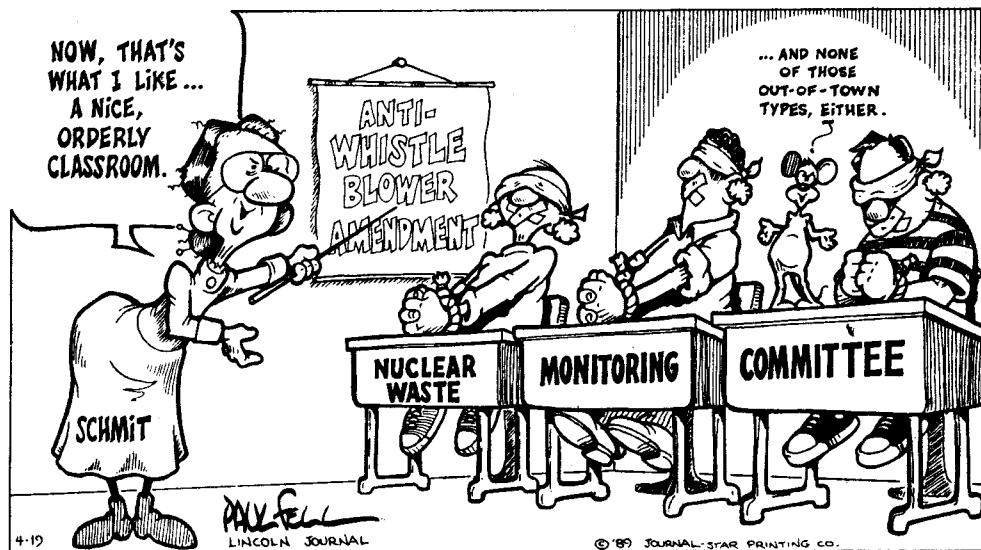
Senator Jackie Smith of Hastings

the decisions for Nebraskans."

Senator David Bernard-Stevens of North Platte

"We went out-of-state to find someone who is going to build this facility and operate it. What they ask is that someone from that league and that caliber at least be allowed to sit on the board and discuss the issues, to... ask the questions."

Senator Doug Kristensen of Minden



have a scenario... where the state as a whole says, 'We're going to have a facility in this state, but we're not going to have it in any of the 93 counties'? There are some things that transcend the rights of the individual."

Senator Howard Lamb of Anselmo

## Residency Requirements

The issue of residency for local monitoring committee members--provoked by the Nora village board's selection of EPA employee Hugh Kaufman of Washington, D.C. to serve on the Nuckolls County Committee--was addressed in vigorous discussion of an amendment offered by Senator Loran Schmit requiring all committee members to be Nebraskans. An attempt by Senator Ernie Chambers to amend the bill to allow one committee member to be a non-Nebraskan failed on a 21-24 vote\*\*. Kaufman said his membership remains intact since the U.S. Constitution protects people from "ex post facto" laws that change rules midstream.

## Arguments For:

"Somebody ought to be raising Cain... saying... they ought to be residents of Podunk.... If I had proposed originally... that an out-of-state individual could serve as a member of the local monitoring committee, you would have scalped me and hung it out to dry, if that is possible."

Senator Loran Schmit of Bellwood

"(To say) that those people... can't be expected to make the kinds of decisions as

## Arguments Against:

"(P)eople who come to us on their knees... saying 'I don't know how to protect my interests. Allow me, please, to select somebody to protect my interests.' And we say, 'No, we're going to give Goliath a machine gun and the power to use it. But you, little David, we're going to take from you even the slingshot that you had.'

Senator Ernie Chambers of Omaha

"The monitoring committee, if they find a problem, will make a recommendation that... (a) change be made.... Then Nebraskans in the Legislature, or in DEC, or another agency--Nebraskans--will be making

## \*\*Amendment allowing one non-resident:

FOR (21): Ashford, Chambers, Dierks, Hall, R. Johnson, Korshoj, Kristensen, Lamb, Landis, McFarland, Morrissey, Pirsch, Robak, Rogers, Schellpeper, Schimek, Schmit, Scofield, Wesley, Withem.

AGAINST (24): Abboud, Baack, Barrett, Beck, Byars, Conway, Coordsen, Crosby, Elmer, Goodrich, Hall, Hartnett, Hefner, L. Johnson, Lamb, Landis, Langford, Lindsay, Lynch, Nelson, Peterson, Pirsch, Robak, Schmit, Wehrbein, Weihing.

PRESENT AND NOT VOTING (1): Bernard-Stevens.

EXCUSED (3): Beyer, Chizek, Labedz.

## Candidates' Smiles, Nightmares

*continued from page 7*

your support," the volunteers on the phone bank seem to say again and again.

The issues? They split over whether the police and sheriff should merge, whether the convention center should be tax-financed, over a curfew and a wheel tax, over annexation policy and the number of cops.

They know that these don't amount to a hill of beans for most voters.

For in the usual city election only garbage collection, street lights, snow removal and police response-time trigger shifts in sentiment.

And character. The Boyle Skeptics maintain that he's still the Terrible Tempered Mr. Bang. The Morgan Skeptics growl

that he's an ever-so-rich guy looking for another toy.

The candidates face each other day after day, at forum after forum. From pals high atop the McKesson Building the morning after the primary to foes starting to grate on one another's nerves after the third "joint appearance" of the day, the campaign grinds on.

There's magic in the process.

As corny as it sounds, the people will decide. Whims and prejudices contend with facts and common sense to move perhaps 100,000 average people to put these guys, their computers, their managers, in their place on May 9. It's America at work!

Exemption from Safe Drinking Water Act Required

# Permit Sought to Mine Dawes County Uranium

by Lynn Moorer

Has the water in the aquifer been cleaned up or not?

A public hearing scheduled for May 11 at Fort Robinson State Park on a proposal to issue a commercial uranium mining permit is expected to examine that question. Assurances attributed to Department of Environmental Control Director Dennis Grams about restoration of wellfields in a pilot mining project southeast of Crawford in Dawes County are also at issue.

Ferret Exploration Co. of Nebraska is seeking the first commercial uranium mining permit in Nebraska to begin mining 3,000 acres of the Chadron Formation aquifer.

For the past three years the Colorado-based firm has operated a pilot project mining 6.7 acres using an in situ mining process. It involves injecting a chemical solution into the aquifer which dissolves the uranium. The water is then pumped to the surface in order to extract the uranium from the solution.

Besides releasing radon gas, the process intentionally pollutes water for mining, thus requiring an exemption from the fed-

eral Safe Drinking Water Act. A decision by the Environmental Protection Agency on the aquifer exemption is expected in May.

According to Bill Gidley, DEC Permits and Compliance Section Supervisor, once mining is completed the water is to be restored to quality levels which allow resumption of previous water uses.

Water quality restoration is the key issue to Western Nebraska Resources Council, a citizens' group headed by Rich Sommer of rural Crawford. "We've not said we're against mining. What we said is, 'If you are going to do this (in situ mining), you need to do it and not leave a mess,' and restoration is the key to that."

Despite expressions of confidence by DEC's Gidley and DEC Underground Injection Control Coordinator David Charlton that Ferret has submitted evidence of restoration in the pilot project, Sommer said a consultant to WNRC disagrees. According to Dr. Jim Warner, a hydrogeologist at Colorado State University, Ferret has simply flushed clean water down the wells and pushed contaminated water outside of the monitored area.

WNRC is also concerned that DEC has allowed Ferret to "fudge" restoration val-

ues because the company was not able to return the levels of vanadium, ammonia as nitrogen, and radium 226 to parameters originally approved by DEC in Ferret's permit.

Gidley said since this is the first permit DEC has issued for uranium mining, "we are bound to make a few miscalculations." He said he is satisfied that the modified restoration values adequately protect groundwater resources. Sommer said the value changes are less important than that "we have a precedent set here where the mining company can say, 'This is about as good as we can do. What can we do to continue this operation?' and the DEC rolls over for them."

Sommer also said Grams reneged on a promise that Ferret would be required to clean up both wellfields comprising the pilot project (one with 40 feet between wells, the other with 150-foot spacing) before DEC would issue a commercial permit. Ferret Vice President Steve Collings said the pilot project only requires restoration of the smaller wellfield. He said the larger wellfield will be restored at the conclusion of commercial operation. Grams declined an interview on the issue.

Senator Sandy Scofield of Chadron, who helped organize WNRC, said, "I've always

been uneasy about this whole process (of regulating uranium mining) because we are new at it. When I talk to people outside of (Nebraska) who have had experience and are knowledgeable about it, they've said, 'Be very careful and don't just assume everything's going to turn out okay.' I've been concerned that maybe we don't give DEC enough resources. They have a tremendous level of responsibility."

Scofield said, however, that DEC has not requested additional funding for regulating the project. She said that since Ferret is supposed to reimburse DEC for all regulatory costs, she hopes the department is doing what it needs to do and is not underfunded.

Sommer said DEC's lack of mining experience, sole reliance on Conservation and Survey personnel as consultants, and apparent "implicit trust in the mining company" concerns the citizen's group. "We've begged them to talk to people in Wyoming and Texas where they've had in situ mines for a while and find out what the problems are. (But) they're not interested in doing that," said Sommer. "They don't seem to be aware that there can be any problem."

# Lincoln's Sheldon to Feature Glasnost Film Fest

The Glasnost Film Festival, a festival of new Soviet cinema, highlighting documentary films, is coming to Lincoln Friday, April 28 through Sunday, April 30. The Festival is touring the United States. Three Soviet filmmakers, screenwriter Leonid Gurevich (head of the delegation), film director Vlastislav Mirzoyan, and film director Sergei Miroshnichenko, will accompany the Festival to speak on Soviet Cinema and society in the glasnost era and answer questions from the audience at each of the 7:30 p.m. screenings of their films.

The Festival includes three programs, approximately two hours long, each consisting of four or five films. Complete schedules and synopses are available at the Sheldon Memorial Art Gallery. Additional films and screenings may be added and will be announced during the Festival. Admission to each program is \$4 (\$3 for senior citizens, children and members of the Friends of the Sheldon Film Theater).

The Festival is made possible at the Sheldon Film Theater, in part, through grants from the National Endowment for the Arts, a federal agency, and the Nebraska Arts Council, a state agency. "For too many years, our audiences have seen one thing on screen and another in reality," writes Sergei Murtov, film critic, author and a participant in the Glasnost Film Festival tour. "Docu-

mentary sequences reflecting the drama of real life were removed from films, as if they were splinters that might infect audiences with contaminated ideas. The more these negative themes were 'atypical' of cinema, the more typical they became in real life.

"Things have changed in recent years. Nowadays we are learning to show what we see, and to say what we think. We are witnessing a 'news revolution' in the press, and an 'explosion of advocacy cinema' on the documentary screen. Critics call these films the 'unknown cinema.'"

Remarkable transformations taking place in the USSR continue to capture the attention of the American public. Glasnost and perestroika are Russian words that no longer require translation. In external affairs, the Soviet withdrawal from Afghanistan and agreements eliminating intermediate-range nuclear missiles from Europe signal a new period in the history of Soviet-American relations. It is an era marked by increasing cultural, commercial and other contacts, offering unprecedented opportunities for mutual learning and cooperation.

Because of the Soviet Union's isolation for most of the 20th century, film has played a unique role as a medium for perception and understanding. Our images of Soviet Russia, from the Revolution to the present, have been shaped by film. Recently, the

anti-Stalinist film *Repentance*, which recently appeared at the Sheldon Film Theater, acquainted Americans with the efforts of some non-Russian Soviets toward an honest confrontation with their past. Less known are the distinctive undertakings of Soviet documentary filmmakers striving to illuminate past and present.

Documentary cinema today in the USSR is a vital part of the process of renewal and democratic transformation. No topics are spared, almost no dark pages of past (or continuing) injustice are ignored. These films give us a wonderful window on Soviet society and mentality today.

## Schedule

Friday, April 28, 7:30 p.m.  
Marshal Blucher: A Portrait Against the Background of an Epoch;  
The Wood Goblin; The Trial;  
This is How We Live

Saturday, April 29, 3 and 7:30 p.m.  
The Evening Sacrifice; Against the Current;  
Chernobyl: Chronicle of Difficult Weeks;  
Black Square

Sunday, April 30, 3 and 7:30 p.m.  
The Bam Zone: Permanent Residents;  
And the Past Seems But a Dream;  
Theatre Square; The Tailor;  
Early on Sunday

## Need a Newsletter for Your Organization or Business?

You can have 5,000 copies of a 4 page newsletter (set up like the Observer) printed for \$500. That's a thin dime a copy.  
And all layout, typing and typesetting is included.  
Call Tony at 345-5147 in Omaha for more details.

4th Amendment: Searches Must be Based on "Probable Cause"

# Rail Employee Random Testing Too Intrusive

by Delwyn Milander

*The author is the Assistant Director of the Nebraska Civil Liberties Union*

Two U.S. Supreme Court decisions announced on March 21 represent a major step backward in protections against Fourth Amendment illegal government searches. *Skinner v. Railway Labor Executive's Association*



*ciation* was a challenge mounted by various trade union officials against the post-accident/post-incident drug testing program mandated several years ago by the Federal Rail-

road Administration. *National Treasury Employee's Union v. Von Rabb* was a case involving a drug testing program instituted by the U.S. Customs Service for employees desiring promotions into positions involving drug interdiction, the carrying of firearms, or the handling of classified material.

The ACLU is very aware of the seriousness of the drug problem in the United States today. Impairment of function from using controlled substances in the work place, especially when such use threatens public safety, raise serious questions about individual rights and the legitimate responsibility of the government to protect the public from harm caused by drug abuse.

Previously, virtually every court that has heard a constitutional challenge to testing by government agencies and employers has found that some degree of individual suspicion is necessary, commonly known as the Warrant Clause. Justice Kennedy, writing the majority opinion in *Skinner*, has ignored precedent and overturned a central element of the Fourth Amendment. The expectations of privacy by railroad personnel are diminished, he wrote, "by reason of their participation in an industry that is regulated pervasively to ensure safety."

Justice Marshall, joined by Justice Bren-

nan, wrote a scathing dissent. The majority opinion, the dissenters note, ignores the doctrinal history requiring highly intrusive searches to be based on probable cause. The issue is not whether declaring a war on illegal drugs is good policy, said the justices. "Because the need for action against the drug scourge is manifest, the need for vigilance against unconstitutional excess is great. History teaches that grave threats to liberty often come in times of urgency, when constitutional rights seem too extravagant to endure."

In *NTEU* Justice Kennedy, writing for the majority, continued to make short shrift of employee's privacy interests despite the fact that only five out of 3,600 workers have tested positive so far.

Somewhat unexpectedly, Justice Scalia, dissented, and was joined by Justice Stevens. Scalia denounced the drug screening program as an invasion of employee's rights and an affront to their dignity done to set an example in the drug war. "The impairment

of individual liberties cannot be the means of making a point," wrote Scalia, "even symbolism for so worthy a cause as the abolition of unlawful drugs."

Obviously, these two decisions are enormously disappointing and very dangerous. In gutting the Fourth Amendment of its very core, the requirement that there be some degree of individualized suspicion before a government search can take place, we have come to the bottom of the slippery slope that began some years ago with the Court's recognition of the "special needs" exception to the Warrant Clause. And, as we've cautioned all along, once you move away from the Fourth Amendment's explicit requirements, government tends not to turn back.

Fourth Amendment protections are too important to give up. The ACLU has several drug testing cases in the pipeline and will continue to bring new challenges where appropriate. The ACLU will also continue to press Congress for protective legislation.

## Labor Leader: Railroad Workers Guilty Until Proven Innocent

by Ray Lineweber

*The author is the Nebraska State Legislative Director for the United Transportation Union, which represents railroad conductors, brakemen, and some engineers and firemen.*

Railroad employees in Nebraska do not fear being tested, but being harassed, especially in an industrial setting. An employee may argue with a supervisor one day and the argument may not be forgotten.

I understand the real problem of chemical abuse in our society, and I believe we should take serious and effective measures to address the problem. But what would be the effect of random testing?

The whole assumption that we are hearing from the federal level—that when there is an accident of a serious nature, especially in the railroad industry, chemical abuse is suspected until the employees involved in the are proven innocent, would be reinforced by random testing. Unfortunately, even when later disproven, the initial report that drug or alcohol may have been involved has tarnished the employee's image.

When accidents of serious nature occur in rural communities where everyone knows whose check is good and whose husband isn't, the employees are automatically branded. That in itself is demeaning and demoralizing.

If indeed we're going to utilize a random testing policy, then the proper way to administer those tests in a non-discrimina-

tory manner would be with the utilization of social security numbers. Cast the social security numbers of all employees, from the senior vice-president to the least senior employee on the roster, into the pool, and let everyone take the same chance.

Another way it could be done: areas of the country where there have been more chemically related incidents should be the focus of more concentrated testing. Railroad incidents in Nebraska are at an all time low; the educational programs here are proving successful.

Had the accident that killed the dozens of school children in Kentucky occurred in Nebraska, would we then test every Joe six-pack pickup truck driver on Saturday night?

The way Lancaster County Sheriff Ron Tussing handled the local bars on New Year's Eve is commendable. He directed patrol officers to visit the lounges, and accorded people the opportunity of having a free breath test before they got behind the wheel. They then had the opportunity to call for a ride before they got stopped. That created positive community relations.

The way we deal with chemical abuse should be first through education, with good working conditions and high morale in the workplace, and a genuine concern for individual well-being. There is no reason to believe that random testing accomplishes anything but gutting the Fourth Amendment, which protects us from individual searches when there is no particular reason to suspect an individual.

## That colored stamp:

*Complimentary Copy FINAL COMPLIMENTARY COPY*

What does that colored stamp in the front page "subscription status" box have to do with the survival of this newspaper?

Everything.

Our project works well and is cost-effective. But it's not free. We need 2,000 people to fill out the coupon on page 2 in order to get established.

If the front page of this paper has a colored stamp on it, it's because we're depending on you to join. So get yourself on our mailing list.

And you won't miss a single issue.

*FINAL ISSUE  
Please Consider Our  
Expenses When Renewing  
MEMBERSHIP EXPIRES SOON  
Please Consider Our  
Expenses When Renewing*

Nebraska needs this forum of independent ideas!

One of 20 Best in USA

## Vermont's Socialist Mayor Winds Up Term

by Colman McCarthy

BURLINGTON, VT--"I'll be straight with you," said the straight-arrow Vermonter, a member of the city police force for 17 years and a political conservative. "At first, we were wary of Bernie Sanders. The socialism stuff. We didn't know what to expect. But after eight years with him, I can tell you that he's played fair. The police respect him."

Who'd have guessed? Probably as few people who would have predicted eight years ago, when Bernard Sanders came into office with a 10-vote victory, that he would be named in 1987 by U.S. News and World Report as one of the 20 best mayors in America.

In his city-hall office, which has the cozy feel of a hangout, the nation's only Socialist mayor said he was emotionally and politically prepared to become in a few days the nation's only ex-Socialist mayor. He didn't seek re-election in early March.

After winning four two-year terms in Vermont's largest city, and collecting more votes in the last three elections than his Republican and Democratic opponents combined, Sanders at 47 is ready to explore options. One is the usual: lecturing and writing. The other is to make a second run for Congress. Sanders lost in a squeaker in

November, coming in second by 3 percentage points to a Republican while beating a Democrat two to one. "It's not easy changing the world," Sanders told supporters election night. What has been easy, at least in the world of Burlington, is changing minds about Socialist politics. In theory, and as explained in the works of Norman Thomas, Eugene Debs and Michael Harrington, democratic socialism is the radical narrowing of differences between the ideal and the real. In practice, it's Sanders in Burlington working successfully to deliver a \$52 million pollution-control program to protect Lake Champlain and Burlington harbor. Or creating the Burlington community land trust, the first of its kind in Vermont, or getting a law passed to require that 10 percent of city-funded trade jobs go to women.

To the locals, Sanders was the workhorse who did all that, and much more. Nationally he was seen by the protectors of the conventional as the head of "the People's Republic of Burlington" whose followers were "Sandernistas," and isn't it a howl.

"Up here," says the Brooklyn-born Sanders, "when you're the mayor for eight years and dealing with day-to-day situations, you've got to be treated seriously. For me, and for the people of Vermont, the word, quote-unquote, socialism is not a big deal. Around the rest of the country, it still has a

connotation of being a freak show. I remember doing a radio program in Arizona, and it was like, 'This guy has three heads, ladies and gentlemen.' It was a circus. That's unfortunate. It indicates the lack of knowledge that our people--our citizens--have about what's going on around the rest of the world, even in Canada or Scandinavia, in terms of democratic socialism."

Sanders, married and the father of a college-age son, is a gritty, exacting thinker whose admonitory words bring back to life a rich dye of radicalism now all but lost in colorless American politics. If he speaks intensely about exploitation of the poor or the knaveries of decadent capitalism, it's because he has the details of eight years in the mayor's office to draw on.

During the Sander tenure, Burlington, rising to the ideals of its mayor's populism, voted repeatedly for progressive reforms in tax laws, cable-television rates, environmental regulations and poverty programs. But when citizens rally for changes, according to Sanders, "the business community--the people who have the money--go running to the courts or state legislature to overturn what we have done. There is a frustration that you can't really do what the people want."

Sanders recites a number of reforms approved by the ballot in Burlington but later defeated at the state level judicially or

legislatively. After years of that, he believes, "Instinctively citizens understand that the game is rigged against working people and poor people. And when one in a hundred times you have a government standing up and fighting for (citizens), then you find that the business community, losing on the local political level, is able to take its fight to the courts or legislature and overturn the victories."

When national reporters occasionally dropped by Burlington to check up on Sanders--does the comrade have the hammer and sickle waving over city hall?--the one adjective sure to be used was "avowed," as in "the avowed Socialist mayor." No one is ever called an avowed Democrat or avowed Republican. As used by media centrists, the term is meant to convey mock alarm--watch out for these avowed guys, they're unpredictable and might do anything.

Let it be hoped that Bernie Sanders does stay avowed. He leaves office scorned by some of Burlington's rich and blessed by most of its poor. If he takes a vow of obedience to that high standard, he has decades to keep on keeping the faith.

©1989 Colman McCarthy

*Editor's note: The Eastern Nebraska Socialist Party, is affiliated with the Socialist Party, U.S.A. Contact Don Doumases, P.O. Box 31173 Omaha, NE, 68131.*

## Hungry Babies: Our National Tragedy

by Frances Mendenhall

More than any other group in the United States, children are the most likely to be poor. One out of every four children in this country is born into poverty. The figures on infant mortality are even more shocking. Each year 40,000 infants in America do not live to celebrate their first birthday.

These statistics are made even more tragic by the fact that many of these deaths could be prevented. Compared to other age groups in the United States undernourished children are the least likely to receive attention from our nation's lawmakers. During the last two decades the number of children living in poverty has surpassed the number of elderly who are poor. During this same period government spending for Social Security and Medicare has jumped from \$33 billion to more than \$300 billion in response to the growing needs of our aging population. Long neglected, our older citizens have rightly made their health and survival a political issue.

In contrast, hungry children do not vote and no strong voice speaks out for them. As

a result, funding for children's programs has not kept pace with the growing need for services. An example is financing for the Special Supplemental Food Program for Women, Infants and Children (WIC). The current funding for WIC has reached only about \$2 million, leaving millions of babies and young children hungry as they start their lives. This dramatic health crisis for our nation's children makes it necessary for us to let our representatives in Congress know that it is time to make our children the first concern of our nation. Nebraskans must join the growing number of professional associations and citizen groups that are calling for full funding of the WIC program.

WIC was created by Congress in 1972 and provides nutritional guidance and food supplements to pregnant women, mothers, infants and children 5-years-old and younger who are nutritionally at risk because of poverty. Since its beginning, WIC has repeatedly been shown to be effective in reducing the incidence of low-weight births, the leading cause of infant mortality and a major risk factor in mental retardation, birth defects and learning disabilities.

WIC reaches infants and children at their most vulnerable stage when bones, vital organs and the brain are developing rapidly. Each year 11,000 babies are born with long-term disabilities that result from their fragile low birthweight condition. For millions of women across the country, WIC has made the difference between taking home a full-term, healthy baby and leaving a struggling, low-weight newborn in the hospital.

Despite its proven ability to reduce infant deaths and disabilities, WIC serves only half of those who need nutritional help, leaving 3.6 million women still waiting for services. Inadequate funding has led to long waiting lists for the program and delays of more than three months for nutritional and health counseling for mothers of newborn babies.

What are we to say to the undernourished women, babies and young children who are not presently able to participate in WIC? Do we tell them that highway funding is more important, or that the savings and loan institutions needed the money more than they do?

The WIC program not only works well but is also cost-effective for our society. The

National Commission to Prevent Infant Mortality reports that every averted low-weight birth would save the U.S. health care system between \$14,000 and \$30,000. The cost for caring for a low birthweight infant in a neonatal intensive care unit can reach \$400,000 while the cost of prenatal care that might prevent the low birthweight condition in the first place can be as little as \$400. A study by the Harvard School of Public Health found that every WIC dollar spent to feed a pregnant woman saved \$3 in hospital costs for newborns. Our choice is very clear. We can pay a little now and avoid the heartbreak of undernourished newborns, or we can pay a lot more later to care for many of them.

Babies are everybody's business. By making WIC's life-saving programs fully available to those who need them, we can provide future generations with the healthy start they deserve. This is one time when we can do what is right for the children and what is needed for our economy. Our children are our national treasure and we cannot let their hunger and poverty remain our national tragedy.

# Watchdog Francke on a Rap Rap, Sports Corruption and a Freak Coffin

by Warren Francke

Which World-Herald editorial wins this month's Watchdog Award for going most creatively out of the way to be perverse and inflammatory?

Which Herald item (keep your eye on page 3) best represents the tasteless traditions of turn-of-the century Yellow Journalism and puts the National Inquirer to shame?

What local and national stories are the daily editors neglecting?

And, in the name of minimal fairness and balance, what did the daily most notably contribute to enlightened understanding of the world in recent weeks? The answers aren't easy, but stick with me. They're mixed with a few media notes on journalists who got away.

## We're Talking Weird

Suffice it to say, that the Herald editorial headlined, "Beating the Rap with Rap," appeared on April Fool's Day. For that reason and others, it beats the strained attack on the Washington pro-choice march and wins in the perverse and inflammatory category.

April Fool's or not, Douglas County Defender Tom Kenney took the rap slap seriously. The editorial began, "A weird legal doctrine has surfaced in [Kenney's] office...that teenagers have a First Amendment right to hurl obscene curses at a police officer so long as they are repeating the lyrics of a rap music number."

Kenney replied (and credit the W-H for printing his "Another Point of View"), "Your editorial stated that in cases of this nature, 'tax-supported lawyers materialize to defend the remark ("--thapolice"), cloaking it in the garb of political speech and, in effect, encouraging it."

This suggests, Kenney continued, "that the Douglas County Public Defender's Office picks and chooses the cases that it defends. The fact is that we defend cases when appointed to them by judges. "We don't ride around looking for windmills to joust with."

Score the exchange Public Defender 6, Herald 0. A touchdown.

Then Kenney addressed the "weird legal doctrine" point: "No doubt the World-Herald regards the First Amendment as a majestic doctrine when it uses it to protect its news-gathering and publishing business, but, nonetheless, it is a 'weird legal doctrine' when it is asserted on behalf of a young person from the ghetto."

So Kenney took his turn at being inflammatory.

Meanwhile, two county judges had split their decisions on the argument that black youths who rapped "--thapolice," as the Herald depicted the lyrics, were exercising First Amendment rights. Judge Troia bought the defense and dismissed disorderly conduct charges, while Judge Jones sentenced a similar defendant to one day in jail.

Wrongheaded as was the Herald attack on the defender's office, I agree with the daily and Judge Jones on the outcome. You can rap "--thapolice" and other lyrics all you want at many times and in many places, but not in the faces of police officers dealing with you or with others nearby.

Sharing that view with the daily, I can only assume that it wasn't confident enough in its view to resist such loaded overkill as "tax-supported lawyers materialize" and so on. Seems the Herald expects the defender's office to either refuse to defend such outrageous crimes or to do it half-heartedly. As Kenney noted, "A successful defense to the charge speaks for itself."

## An Edifying Oddity

I hesitate to mention the Tasteless Tradition winner because these edifying oddities on page 3 do brighten the Bland-Herald. But this photo was such a classic throw-back to the sensationalism of the Roaring 20s and the Yellow Journalism before it. Of this I speak:

"Casket Prepared for 700-Pound Man," said the headline beneath the Associated Press photo of a woman doing up the satin lining. The item gave us vital details: for a 700-pound West Virginia man (who apparently died; it didn't say), casket weights 370 pounds, measures such-and-such, requires flatbed truck and crane to lower into grave, fitted to be towed by 12 pallbearers.

First-class journalism. A double sensation. Not just a freak story, but a freak casket.

## No Hitch Here

Some notes from afar:

Dave Hitch, ex-UNO Gateway cartoonist who free-lanced for the Herald, now gives readers of the Springfield, Mass., Telegram & Gazette, something Omahans lack: a daily local editorial cartoon. "I am enjoy-

ing my new job thoroughly," Dave writes. "Never would I have imagined the freedom granted to me here." See sample below.

Stacey Welling, former Herald summer intern and UNO Gateway editor, earned her first credit line in Time magazine April 3. A business writer for the Las Vegas sun, Stacey got credit for contributing to a two-page Time spread that exposed telephone con artists who promise you big prizes.

Ken Jarecke took second prize in a national photographer of the year competition. Also formerly of the Gateway and the Herald, Jarecke shot images of Jesse Jackson and George Bush which won heavy play last year, and he recently traveled with the president to the Orient.

Two more with Herald and UNO ties will travel from New York to be honored at a Communication Department awards luncheon May 5. Dave Krajicek now heads the police bureau for the New York Daily News, a job that brings him threats from mafiosi and such assignments as the Jill Steinberg murder. Paul Critchlow, corporate communication chief for Merrill Lynch, will first talk to the May 4 Press Club scholarship luncheon about his role in two crises: on Wall Street for his current employer and Three-Mile Island when he was media aide to the governor of Pennsylvania.

Paul went from Benson High to UNL to Vietnam to UNO to a Herald summer to Columbia for a Master's to the Philadelphia Inquirer to the jobs noted above.

## Watch This Pair

What national and local stories don't excite Herald editors? On the national scene, I'm waiting to see if anyone in the Nebraska media takes up the challenge led by Sports Illustrated but now summarized by Time Magazine in its call for action against the corruption of bigtime college athletics.

Make no mistake, regardless of the

outstanding personal qualities of Coach Tom Osborne, he is as much a part of the problem as Oklahoma's Barry Switzer. Nebraska-Lincoln, Iowa State and even Creighton are clearly part of the problem. So is Georgetown's John Thompson and all the rest who continue to advocate special treatment of athletes and big spending on sports.

In this area, only the president of the University of Iowa has shown strong leadership by pushing for freshman ineligibility.

On the local scene, I'm intrigued by the indifference to the action by HMO Nebraska (Blue Cross/Blue Shield), which, with minor exceptions, took prescription business away from our neighborhood druggists and turned it over to Walgreen's.

For me, it worked this way: I signed on with HMO Nebraska for the year, partly due to the fact that my old neighborhood pharmacy, Baum Drug, was still on its list. Then shortly into the year, with no opportunity for me to change to other health insurance, I learned I'd have to switch from people I'd trusted for years.

Another druggist I've known for decades sent a flyer headed, "Losing Your Freedom of Choice Is a Bitter Pill to Swallow."

That may be self-serving rhetoric, but it strikes home to me. I lost my choice and this significant action against homegrown businesses received little attention in the press.

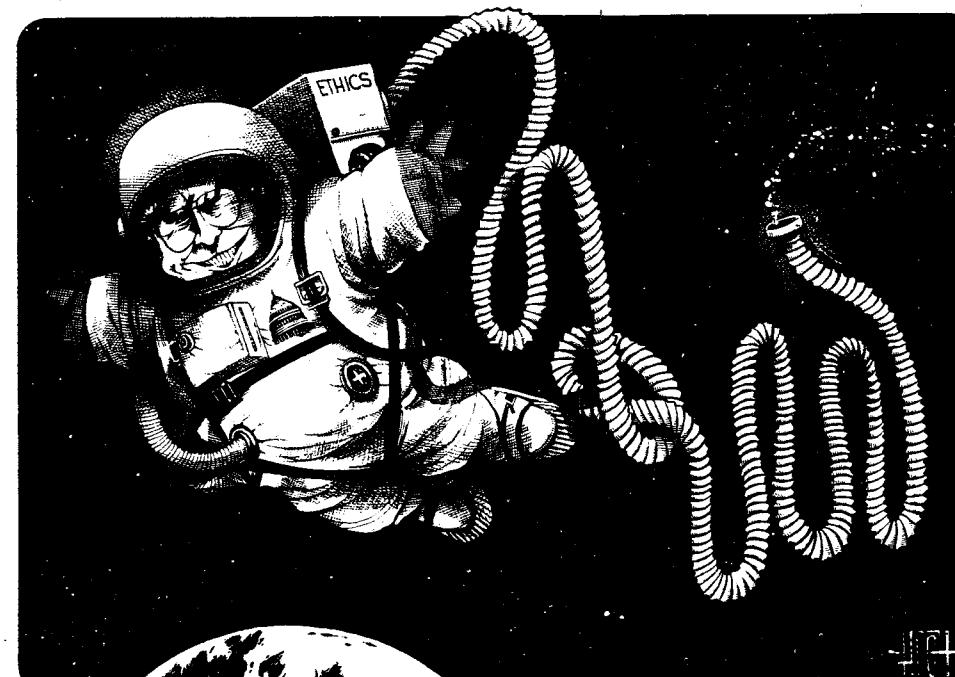
## He Gave Grandeur

Did the Herald offer a shining moment to outweigh the casket for the 700-pound man? It gave us George Frost Kennan in a column by Mary McGrory.

She told how Kennan, "The world's greatest authority on the Soviet Union," touched the Senate and gave us "grandeur on Capitol Hill." He appeared before the Foreign Relations Committee "and disengaged with such lucidity, learning and largeness of mind that the senators did not want to let him go."

At 85, Kennan's wisdom has been neglected by recent administrations. When he finished talking, "The whole room erupted in applause. The senators were on their feet clapping and proud." For that new glimpse of this enlightened man, I'm grateful. He took his name from two men, George Kennan the writer and George Frost the artist, who reported and illustrated the horrors of the Siberian exile system of the Czars. When the earlier Kennan exposed those abuses, critics said he was too negative, that he had ignored happy homes in St. Petersburg and omitted that the Czar was a fine family man.

Kennan replied in 1890 by asking his critics what distant happiness had to do with the whipping of an educated woman in the salt mines of Siberia? He said their complaints were equivalent to asking him to balance the mistreatment of South Dakota Indians with the pleasures of Boston mansions.



The Wright stuff...